

REMARKS

Claims 1, 5, and 7-24 remain in this application. Claims 2-4 and 6 were previously canceled. Claim 1 is hereby amended. All other claims remain the same. Reconsideration of the claims as presented is requested.

Applicants acknowledge with appreciation the courtesies extended to the undersigned during the telephone interview of October 20, 2010, during which the merits of the office action were discussed. The §112 rejection was discussed in detail. Examiner proposed the following amendment to Claim 1, subsection a. 6) c): “~~at least~~ each one of the multiple nodes comprises a computer program storage device readable by a computer, tangibly embodying a computer program or instructions executable by the computer to perform ~~method steps for providing a~~ the functions of each respective first node over first party, second node of the second party, payment processing gateway, a transaction client logic engine, a third party fee calculation client logic engine, ~~or a~~ and third party fee fulfillment client logic engine;...” Examiner indicated that amendment of claim 1 in such a manner would be sufficient to overcome the §112, 2nd para. rejection of indefiniteness. No agreement as to allowability of the claims was reached.

The Advisory Action indicates that the amendment filed August 31, 2010 was entered and considered. As a result, the rejection of claim 16 under 35 U.S.C. 112, 2nd para. as being indefinite has been overcome.

Claim 1 has been amended to specify: “4) a fourth node distinct from and at a different locale than the first, ~~and~~ second and third nodes, the fourth node comprising a transaction client logic engine; 5) a fifth node distinct from and at a different locale than the first, ~~and~~ second and third nodes, the fifth node comprising a third party fee calculation client logic engine; and 6) a sixth node distinct from and at a different locale than the first, ~~and~~ second and third nodes.” Applicants respectfully submit that support for said amendments is found in the specification and figures as originally filed (pgs. 24-32, FIGS. 4-5).

Claim 1 has also been amended, in the spirit of what was intended by Examiner, to specify, “a) at each occurrence, a node is ~~selected from a computer, server or gateway~~ comprises a program storage device readable by a computer, tangibly embodying a computer program or instructions executable by the computer to perform the respective functions of the node; and b)

the payment processing gateway is on a node different than the nodes of transaction client logic engine, the third party fee calculation client logic engine, and the third party fee fulfillment client logic engine; and c) ~~at least one of the multiple nodes comprises a computer program storage device readable by a computer, tangibly embodying a computer program or instructions executable by the computer to perform method steps for providing a payment processing gateway, a transaction client logic engine, a third party fee calculation client logic engine, or a third party fee fulfillment client logic engine.~~” This amendment addresses Examiner’s concern, reduces redundancy and eliminates the possible misconstruction of the claim as to what each node comprises.

Claims 1, 5, 7-20 and 24 stand rejected under 35 U.S.C. 112, 2nd para. as being indefinite. Examiner requests clarification of claims 1, 5, 7-20 and 24 as to whether the claims cover a system or software. Insofar as it may apply to the present claims, this rejection is traversed.

Applicants have considered Examiner’s proposed amendment (above) of claim 1; however, Applicants believe the suggested language might be misconstrued to require that each computer, for example, in the system will have to provide the function of all the computers in the system, meaning that each computer would provide the same comprehensive functions. Applicants’ intent, however, is that each computer, for example, in the system will perform the respective functions of its node, without having the requirement of performing the functions of all the other nodes in the system. In other words, each computer performs the functions of its respective node. Accordingly, Applicants have amended the claim as indicated in order to fulfill Examiner’s intent, while keeping the scope of the claims invention within the intended scope of coverage. If Applicants’ proposed language is unacceptable, Applicants respectfully request a telephone interview with Examiner prior to issuance of an office action.

Applicants respectfully submit that this rejection has been overcome and request that it be withdrawn.

Claims 1, 5 and 7-24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan (U.S. Publ. 2003/0093320) in view of Agee et al. (U.S. Publ. 2003/0097303). Examiner

has relied upon but not reiterated his prior arguments of record and has rebutted Applicants' most recent arguments. Insofar as it may apply to the present claims, this rejection is traversed.

Applicants note the following prior to addressing Examiner's arguments in the Advisory Action and in the office action made final.

Applicants' prior comments of record are equally applicable here and are incorporated herein by reference. Applicants previously argued that Examiner misconstrued the term "third party service provider" as used by Agee and, as a result, has deemed the instant claims obvious over the prophetic combination of references. Applicants also previously argued one cannot assume that the required features of one element (the payment gateway) of Agee can be or is indeed taken over by another element (the third party provider) of Agee. This is especially true when the art of record clearly and separately identifies the two different elements and even includes embodiments wherein both elements are present and wherein one element is bypassed.

Applicants previously provided both generalized and detailed diagrams of the currently claimed system and noted that the generalized "third party service provider" is actually a combination of three different components in claim 1: the transaction client logic engine, 3rd party fee calculation logic engine and 3rd party fee fulfillment logic engine. Applicants note that the instant claims are intended to cover the embodiment, wherein the payment processing gateway is on a different node than and at a different locale than the third party service provider. This distinction is important as it ensures the key basis of the invention, which is that the third party service provider is only indirectly and not directly in the flow of financial transaction data from the merchant or consumer through the payment processing gateway and to the financial network. The advantages of such a configuration for the system have already been made of record in the prior response and in the specification as filed.

In order to clarify and more distinctly claim the invention as intended, Applicants have amended claim 1 to specify that the payment processing gateway, which is on the third node, is on a different node and at a different locale than the third party service provider (and its components). Claim 1 has been amended to specify: "4) a fourth node distinct from and at a different locale than the first, ~~and~~ second and third nodes, the fourth node comprising a transaction client logic engine; 5) a fifth node distinct from and at a different locale than the first, ~~and~~ second and third nodes, the fifth node comprising a third party fee calculation client logic engine; and 6) a sixth node distinct from and at a different locale than the first, ~~and~~ second and

third nodes.” Such construction requires that the functions of the third party service provider components cannot reside on the node that serves as a payment processing gateway. In other words, the respective functionalities of the payment processing gateway and the third party service provider must both be present on different nodes, and each node must keep its respective functions. That means the instant third party service provider cannot assume the functionality of the payment processing gateway, or *vice versa*, as required by Examiner’s prophetic embodiment.

In the office action made final, Examiner argues,

“Examiner does not believe that Applicant has established: a. the definition arrived at by Examiner for ‘payment processing gateway’ ... was incorrect and unreasonable; b. that the functions of the third party service provider (in the embodiment of Agee used by Examiner) that were summarized by Examiner ... were an incorrect interpretation of Agee... If Applicant can persuade Examiner of one or more of (a) through (c) immediately above, Examiner suggests that that may be a more productive avenue for future arguments.” (pg. 6)

In the Advisory Action, Examiner argues:

Applicant has argued based on embodiments different than embodiments relied upon by Examiner for the rejections. Therefore, such arguments are not relevant. As an example, arguing that the tax system and the third party service provider in Agee can be the same party in some embodiments of Agee is not persuasive where Examiner has relied upon embodiments of Agee where the tax system and the third party service provider are separate parties. (pg. 3)

Applicants note and Examiner has acknowledged that Agee does not provide a clear definition of “payment processing gateway” or of “third party service provider”. Examiner then relies upon his prior definition of “payment processing gateway” and of “third party service provider” based upon use of the terms by Agee and by the technology citations provided by Examiner. Examiner then argues (telephone interview) that the alternate embodiment of FIG. 7B of Agee, which does not include a “gateway”, and instead includes the “third party service provider” between the “merchant” computer and the financial network, is the embodiment that most closely resembles the instant claimed invention. In that particular embodiment, Examiner argues, he “has relied upon embodiments of Agee where the tax system and the third party service provider are separate parties.”

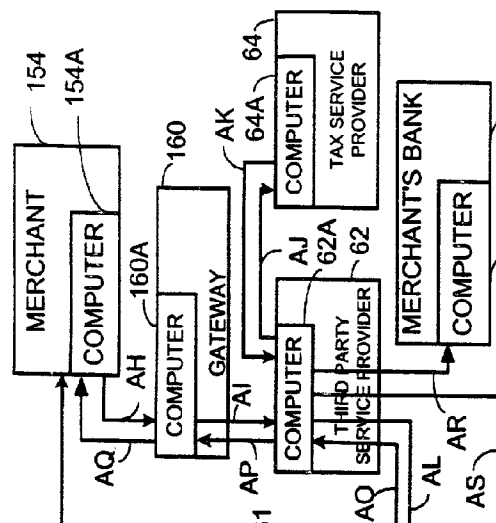
Applicants respectfully submit that the functions of the third party service provider (in the prophetic embodiment of Agee used by Examiner) that were summarized by Examiner were an

incorrect interpretation of Agee. Examiner has deemed unpersuasive Applicants' prior arguments as to why the Third Party Service Provider of Agee cannot be construed to serve as a Payment Processing Gateway. Examiner suggests that Applicants' more narrowly define the definition of Gateway.

Applicants acknowledge Agee discloses:

As noted above, the gateway 160 may be bypassed in other embodiments. The third-party service provider computer 62A may forward the information to a computer 64A at a tax service provider 64 (line AJ in FIG. 7B) for determination of allocation of tax funds to various taxing entities. The tax service provider computer 64A then returns the information, including the tax allocation information, to the third party service provider computer 62A (line AK in FIG. 7B), which forwards the information to a computer 161A at a debit clearing house 161. [0084]

That specific embodiment is depicted in FIG. 7B of Agee, except that the "gateway" is bypassed (absent).



In the alternate embodiment, the "third party service provider" of Agee still communicates directly with the merchant computer, the tax service provider computer and the financial network (generalized term). As a result, Examiner equates the "third party service provider" of Agee with the instant "payment processing gateway" and the "tax service provider" of Agee with the instant "third party service provider".

Applicants disagree with such reasoning. Applicants previously argued that Examiner's construction of the disclosure of Agee is incorrect and does not take into full consideration the use of the terms "gateway" and "third party service provider" by Agee, even though those terms

are not specifically defined by Agee. Applicants then provided extensive discussion and citation (from the specification of Agee) as to Agee's usage of those terms. Regarding Agee's "gateway", Applicants previously demonstrated, by support from text citations of Agee, that:

- The gateway is optionally present and does not perform the functions of Agee's third party service provider;
- The role of the third party service provider and the gateway are specifically distinguished and are two different components of the system;
- When the gateway is absent or "bypassed", Agee provides no specific disclosure that Agee's third party service provider will assume the functions of a payment processing gateway;
- The gateway receives information from the merchant and sends information to the third party service provider.

Moreover, Applicants respectfully submit that Examiner has overlooked a key problem with the prophetic construction. If, as Examiner argues, the third party service provider of Agee assumes the functionality of the gateway (because it is bypassed) and the third party service provider and tax service provider of Agee remain as separate entities (as argued by Examiner), then the third party service provider of Agee must still retain its other functionality not related to the functionality of the gateway or of the tax service provider. It would be impermissible for Examiner to strip the third party service provider of Agee of its other functionality in order to arrive at the prophetic embodiment proposed by Examiner. Accordingly, even when the "gateway" of Agee is bypassed, the third party service provider must still be able to perform its other functions set forth in the specification regardless of whether or not the third party service provider also assumes the functions of the gateway. These other functions include:

- Para 47: determining the amount of tax to be collected;
- Para 50: determining of which credit card association and/or other Card Organization to send the transaction information (see also para 56);
- Para 59: containing the tax calculation database;
- Para 65: distributing tax proceeds to the taxing agencies (see also paras 68 & 92);
- Para 70: containing the tax service provider module (see also para 78);
- Para 85: clearing the transaction;

- Para 86: receiving funds from the debit clearing house;
- Para 86: differentiating between payment types, sending tax payments to the taxing agencies, and non-tax payments to the merchant

Accordingly, even when the “gateway” of Agee is bypassed and the Third Party Service Provider communicates directly with the Merchant computer and the financial network, the Third Party Service Provider must still provide important functions not provided by the gateway, and the Third Party Service Provider still remains within the direct flow of transaction information. Such prophetic construction requires that Agee’s third party service provider provide the gateway and other functions on the same node and the same locale. There is no teaching in Agee to suggest that the Third Party Service Provider can assume the functionality of the payment processing gateway and relinquish its own functionality and additionally pass along the relinquished functionality to the tax service provider. In other words, the third party service provider of Agee et al.:

- must continue to provide functionality that is not included in the functionality of the instant payment processing gateway but is instead included in the functionality of the instant third party service provider;
- must still remain within the direct flow of transaction information regardless of whether Agee’s gateway is present or absent;
- must retain functionality not provided by the Tax Service Provider even if it assumes the functionality of the gateway that is bypassed;
- is more akin to Applicants’ Third Party Fee Calculation Logic Engine and Agee’s Third Party Service Provider is more akin to Applicants’ financial network;

Applicants note that the instant specification (pg. 24-25) provides a clear definition of the payment processing gateway, and it does not include the functionality of the instant third party service provider. As previously noted, the instant third party service provider does not communicate directly with the merchant computer or the financial network and, thus, is not within the direct flow of transaction information. Where the prophetic embodiments of Agee place the third party provider as an intermediary in the direct flow of transaction information, the instant claims preclude such an embodiment.

As Examiner stated during the telephone interview of August 25, 2010, Examiner had to rename the elements (thereby resulting in improper reassignment of functionality not suggested) in Agee's illustrations in order to construe that Agee's Third Party Service Provider can prophetically function as the instant Payment Processing Gateway and that Agee's Tax Service Provider can prophetically function as the instant Third Party Service Provider. However, Applicants respectfully submit that the embodiment of the prophetic combination of Agee and Sullivan that most closely resembles the presently claimed invention is the embodiment of FIG. 7B, wherein Agee's gateway is present, not absent or bypassed, and Agee's third party service provider and Agee's (or Sullivan's) tax service provider are both present and integrated. In other words, there is no need to rely upon the embodiment wherein Agee's gateway is bypassed, and there is no need to improperly construe Agee's third party service provider. In the embodiment of FIG. 7B, the gateway of Agee still lies between the merchant and the third party service provider, the third party service provider of Agee still lies directly in the flow of financial information, and the third party service provider communicates with the tax service provider. Such an embodiment is different than the instantly claimed embodiment, wherein, as a result of the design of the instant system, the payment processing gateway lies directly in the flow of financial information and the third party service provider does not lie directly in the flow of financial information.

As previously argued, Applicants respectfully submit that Agee's Third Party Service Provider is actually more akin to a "Payment Processor", as the term is used in the art, than it is a payment processing gateway, since the scope of service provided by Payment Processors most closely resembles and parallels the scope of services that Agee attributes to the Third Party Service Provider (in addition to the tax determination functions).

Based upon the above reasoning, Applicants have amended claim 1 to specify that the payment processing gateway is on a third node different than that of the transaction client logic engine (fourth node), third party fee calculation client logic engine (fifth node), and third party fee fulfillment client logic engine (sixth node), wherein the fourth through sixth nodes comprise the third party service provider. By so doing, the instant payment processing gateway and its functionality cannot be on the same node as the third party service provider, and the third party service provider cannot assume the functionality of the payment processing gateway as occurs in the proposed prophetic embodiment. This construction precludes the prophetic embodiment

proposed by Examiner wherein the third party service provider of Agee assumes the functionality of the gateway of Agee but must still retain its own functionality, because the third party service provider and the gateway of Agee must be on the same node in order to achieve Examiner's construction.

As previously argued, there are substantial advantages to removing the instant third party service provider from the direct flow of transaction information while keeping the payment processing gateway within the direct flow of transaction information.

Applicants prior arguments of record regarding Sullivan are equally applicable and are not reiterated herein. Applicants submit that the prophetic combination of Sullivan and Agee might result in a third party fee payment system; however, such a system would not possess the specific construction, connectivity and functionality of the claimed invention, because Sullivan does not provide with Agee is missing. Specifically, Sullivan does not provide the embodiment wherein the payment processing gateway is present, the third party service provider is present and the third party service provider does not communicate directly with the Servant, Merchant or financial network computers.

Claims 21-24

With regard to claim 21, Applicants' prior arguments of record are equally applicable here as well. Examiner acknowledges that Sullivan et al. does not disclose or suggest "wherein the tax system components are divided in the manner specified in claim 21" and then argues that Sullivan discloses division of the logic engines of its system and relies upon Agee et al. as suggesting that "the third party service provider 62 system can be regarded as a payment processing gateway." Moreover, Sullivan et al. does not disclose or suggest a transaction client logic engine that is "adapted to receive from a third party fee fulfillment client logic engine one or more information data packets comprising authorization and fulfillment data for the transfer of funds and to transmit said one or more information data packets to the payment processing gateway." This is because the third party service provider of Agee et al. transmits the data directly to the financial network rather than back to the payment processing gateway.

With regard to claim 22, Applicants' prior arguments of record are equally applicable here as well. The prophetic combination of Sullivan et al. and Agee et al. fails to suggest a third party fee calculation client logic engine wherein said logic engine receives "one or more information packets from a transaction client logic engine, said one or more information packets

from the transaction client logic engine having been transmitted to the transaction client logic engine by a **payment processing gateway**” and transmits “to the transaction client logic engine, to a third party fee fulfillment client logic engine, or to a payment processing gateway a transaction data information packet including said third party fees owed.” The system of Sullivan et al. fails to disclose the specified pathway and information content.

With regard to claim 23, Applicants’ prior arguments of records are equally applicable here as well. The prophetic combination of Sullivan et al. and Agee et al. fails to suggest such a logic engine wherein said logic engine “determines the third party fees owed on a transaction between the first and the second party; provides authorization and fulfillment data for the third party fees owed on the transaction between the first and the second party; and transmits to a payment processing gateway or the transaction client logic engine one or more information data packets comprising authorization and fulfillment data for the transfer of funds.” The system of Sullivan et al. fails to disclose the specified pathway and information content.

Applicants respectfully submit that this rejection has been overcome and request that it be withdrawn.

In view of all the foregoing, Applicants respectfully submit that they have made a diligent effort to place the application in form for allowance. An early notice thereof is respectfully requested.

Respectfully submitted,

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